

REMARKS

Summary of Office Action

Claims 1 through 22 were pending in the application. Claims 1 through 5, 9 and 10 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,910,122 to D'Angelo in view of U.S. Patent No. 5,871,905 to Thieme et al. Claim 6 was rejected under 35 U.S.C. 103(a) as being unpatentable over D'Angelo in view of Thieme et al., and further in view of U.S. Publ. No. 20010008614 to Aronowitz. Claim 7 and 8 were rejected under 35 U.S.C. 103(a) as being unpatentable over D'Angelo in view of Thieme et al., and further in view of U.S. Patent No. 6,133,036 to Putcha et al.

Regarding the method claims, claims 11 through 18, 21 and 22 were rejected under 35 U.S.C. 103(a) as being unpatentable over Thieme et al. in view of D'Angelo. Claim 19 was rejected under 35 U.S.C. 103(a) as being unpatentable over Thieme et al. in view of D'Angelo, and further in view of Aronowitz. Finally, claim 20 was rejected under 35 U.S.C. 103(a) as being unpatentable over Thieme et al. in view of D'Angelo, and further in view of Putcha et al.

Response to Rejections

The collection devices disclosed by D'Angelo and Thieme require a pad or similar media to: 1) capture the saliva sample (Thieme, Col. 11, lines 19 -- 26); 2) filter the sample (D'Angelo, Col 4, lines 64 -- 67); and/or 3) function as a substrate for a favorant (D'Angelo, Col 5, lines 3 -- 5). In Thieme, additional steps must also be taken to extract the sample from pad. See e.g., Thieme, Col. 12, lines 4 -- 15. Further, once used, the pad and/or filter of Thieme and D'Angelo become additional biological contaminants that must be properly disposed of.

Regarding now claim 1, as amended claim 1 has dispensed with the use of a pad and/or filter as part of the collection device and focused instead on drawing a saliva sample directly from a user's mouth. Specifically, claim 1 has been amended to close off the description of the saliva collection device so that it may now *consist of* a transfer pipette having a compression end and an intake end and a salivation catalyst positioned directly on the intake end. Stated differently, unlike the devices of D'Angelo and Thieme that required the use of filter or pad, the collection device of claim 1 may now include a pipette (without a filter, favorant substrate or collection pad) that may draw and retain a liquid saliva directly from the user's mouth. Furthermore, the salivation catalyst associated with Applicant's claimed device may be applied directly to the intake end of the pipette. This differs, of course, from D'Angelo which required the filter to function as a substrate for the catalyst. See D'Angelo, Col 5, lines 3 – 5; See also, MPEP 2144.04(II)(B) (“Omission of an element with retention of the elements function is an indicia of unobviousness”).

Accordingly, Applicant respectfully submits that claim 1 is allowable over the combination of D'Angelo and Thieme. Applicant also submits that dependent claims 2, 3 and 5 – 10 are also allowable since those claims depend from an allowable base claim. Further, Applicant does not concede the validity of the examiner's specific arguments concerning claims 1 – 10 and it reserves the right to address those arguments in the event the examiner maintains or continues the rejection of those claims.

Regarding claim 11, the description of the saliva collection device has (like claim 1) been amended using closed language that precludes the use of a filter or pad with the device. Furthermore, the collection step has been clarified to indicate that the intake end of the transfer

pipe may be placed directly in the user's mouth to draw in a liquid saliva sample. Accordingly, claim 11 differs from the combination of Thieme and D'Angelo in that 1) Applicant's method uses a collection device that does not include a filter or pad and 2) Applicant's particular device is placed in the user's mouth to collect a liquid saliva sample.

Accordingly, Applicant respectfully submits that claim 11 is allowable over the combination of Thieme and D'Angelo. Applicant also submits that dependent claims 12 - 16 and 18 - 22 are also allowable since those claims depend from an allowable base claim. Further, Applicant does not concede the validity of the examiner specific arguments concerning claims 11 - 22 and it reserves the right to address those arguments in the event the examiner maintains or continues the rejection of those claims.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

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